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# HPV/T&A POLICY WORKSHOP

Timely and Appropriate Enforcement Response to  
High Priority Violations  
(12/22/98)



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# SCOPE OF THE HPV POLICY

- The Policy
  - Designed to prioritize federal, state, and local agency enforcement efforts
  - Supersedes previous policy documents related to Significant Violators (SVs) and Timely and Appropriate Enforcement Response (T&A)
- The Policy Covers
  - Definition/Identification of HPVs
  - Timely and Appropriate Enforcement Response
  - Penalties
  - Reporting in AFS
- The Policy cannot be used to establish new standards, and it creates no legal rights



# APPLICABILITY OF THE HPV POLICY

- Applies to:
  1. all Major Sources (as defined by the CAA Amendments of 1990);
  2. any “synthetic minor” (Title V, NSR, MACT) source where the violation affects the source’s synthetic minor source status;
  3. any source, major or minor, upon mutual agreement between EPA and State/Local at their discretion
- Does not apply to a Title V source that is not major, e.g. minor or area NSPS or NESHAP sources.
- EPA expects all violations to be addressed, whether meeting HPV criteria or not.



# IDENTIFICATION OF HPVs

- *General HPV Criteria*
  - The 10 General Criteria generally do not involve violations where the magnitude or duration must be measured to determine HPV status
  - Apply only to the pollutants of concern (i.e., for which source is major)
  - Some criteria indicate automatic HPVs (e.g., NESHAP/MACT violations, excluding area sources)
  - Other criteria require examining whether the violation is "substantial," but without more specific guidance (e.g., "substantial" violation of § 112(r))



# GENERAL HPV CRITERIA

(By AFS General Criteria Codes)

- GC1: Failure to obtain a PSD permit (and/or to install BACT), an NA-NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either
- GC2: Violation of air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions
- GC3: Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NA-NSR, or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NA-NSR/PSD/Title V thresholds.)



# GENERAL HPV CRITERIA

(By AFS General Criteria Codes)

- GC4: Violation of any substantive term of any local, state or federal order, consent decree or administrative order
- GC5: Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification
- GC6: Substantial violation of the source's obligation to submit a Title V permit application (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
- GC7: Violations that involve testing, monitoring, recordkeeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits



# GENERAL HPV CRITERIA

(By AFS General Criteria Codes)

- GC8: Violation of an allowable emission limit detected during a reference method stack test
- GC9: CAA violations by chronic or recalcitrant violators
- G10: Substantial violation of CAA Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit section 112(r) risk management plan)





# GENERAL CRITERION 1

## (GC1)

- *Failure to Obtain PSD or NA-NSR Permit*
  - Covers failure to:
    - Obtain PSD permit
    - Install BACT
    - Obtain NA-NSR permit
    - Install LAER or obtain offsets
    - Obtain permit for major modification
  - An automatic HPV -- severity factor not applicable



# GENERAL CRITERION 2

## (GC2)

- *Violation of Air Toxics Requirements*
  - Involves violations of NESHAP or MACT requirements that:
    - results in excess emissions, or
    - violates operating parameter restrictions
      - Operating parameter restrictions are independently enforceable -- if violated, no need to show excess emissions resulted



# GENERAL CRITERION 3

## (GC3)

- *Violation That Affects Synthetic Minor Status*
  - Covers violations at a synthetic minor source that affects the source's PSD, NA-NSR, or Title V status, e.g.:
    - Violation of a permit condition that limits PTE to below major threshold
      - no need to show actual emissions exceed applicable thresholds



# GENERAL CRITERION 4

## (GC4)

- *Violation of Order or Decree*
  - Involves violations of substantive terms of:
    - Local/State/Federal orders
    - Consent decrees
    - Administrative orders
  - Examples include failure to:
    - Meet increment of progress
    - Complete agreed-upon control plan
    - Pay a penalty



# GENERAL CRITERION 5

## (GC5)

- *Title V Certification Violation*
  - Violation of source's Title V certification obligations, e.g.,
    - Failure to submit a certification
    - Failure to fully disclose enforcement activity or compliance with all applicable requirements



# GENERAL CRITERION 6

## (GC6)

- *Title V Permit Application Violation*
  - Covers failure to submit Title V permit w/i a 60 day grace period from due date
  - Administrative permit amendments, minor permit modifications, and corrected applications are exempted



# GENERAL CRITERION 7

## (GC7)

- *Testing, Monitoring, Recordkeeping, or Reporting Violation*
  - Testing, monitoring, recordkeeping, or reporting violations that:
    - Substantially interfere with enforcement, or
    - Substantially interfere with determining source's compliance with emission limits
  - Examples might include:
    - Failure to install required monitor
    - Failure to certify/QA monitor that interferes with ability to use monitor data for compliance purposes
    - Failure to keep accurate or adequate coating formulation or usage data



# GENERAL CRITERION 8

## (GC8)

- *Violation of Stack Test*
  - Includes any violation of an emission limit detected by a reference method stack test
  - Any level of violation is an HPV
  - Any violation is an HPV even if the condition causing the violation is fixed during the test
  - This General Criterion covers the same types of violations as Matrix Criterion 1





# GENERAL CRITERION 9

## (GC9)

- *Chronic or Recalcitrant Violation*
  - Covers CAA violations by chronic or recalcitrant violators
    - For situations where violation not to a degree covered by other General or Matrix Criteria
    - To be applied when source has consistent, long term trend of violations not meeting HPV thresholds, or
    - If source has been HPV in past and continues to have same or similar violations, but less frequently, or at a lower magnitude, or
    - If source fails to cooperate during investigation of violations or fails to make good faith efforts to rectify problems



# GENERAL CRITERION 10

## (G10)

- *Section 112(r) Violation*
  - An HPV would be any "substantial" violation of a § 112(r) requirement (prevention, detection and response involving the accidental release of substances regulated under § 112(r))
  - What is "substantial" is to be worked out between the Regional Office and the State
  - For a Permitting Authority that has not received § 112(r) delegation, the only State/Local enforceable HPV would be the failure to submit a risk management plan
    - This might include a submission that is substantially incomplete or inaccurate



# HPV MATRIX CRITERIA

- Not related to General Criteria – apply independently
- The Matrix Criteria involve violations where the severity can be measured using exceedance data -- Specific severity criteria (the magnitude and in some cases the duration of violations) are indicated in the Matrix Criteria
- HPV Matrix Criteria cover emission violations, parameter monitoring violations, and opacity violations



# HPV MATRIX CRITERIA

(By AFS Matrix Criteria Codes)

*M1: Violation of allowable emissions limitation:*

M1A: detected by stack testing

M1B: detected by coatings analysis, fuel samples, other process materials sampling, or raw/process materials usage reports and >15% of limit

M1C: detected by coatings analysis, fuel samples, other process materials sampling, or raw/process materials usage reports and > SST.

*M2: Violation of parameter limits, where the parameter is a direct surrogate for an emissions limitation, detected by continuous/periodic parameter monitoring:*

M2A: For >15% of limit for >3% of operating time during reporting period

M2B: Any exceedance for > 50% of operating time in reporting period

M2C: Any exceedance for > 25% of operating time in two consecutive reporting periods



# HPV MATRIX CRITERIA

*M3: Exceedance of applicable non-opacity standard via CEM:*

- M3A:  $\leq$  24-hour standard: for  $> 15\%$  of limit for 5% of operating time in reporting period
- M3B:  $\leq$  24-hour standard:  $> SST$
- M3C:  $\leq$  24-hour standard: for  $> 15\%$  of limit for  $> 3\%$  of operating time for two consecutive reporting periods
- M3D:  $\leq$  24-hour standard: any exceedance for  $> 50\%$  of operating time in reporting period
- M3E:  $\leq$  24-hour standard: any exceedance for  $> 25\%$  of operating time in two consecutive reporting periods
- M3F:  $> 24$ -hour standard: any exceedance



# HPV MATRIX CRITERIA

## *M4: Exceedance of applicable opacity standard:*

M4A: COM, 0%-20% Opacity Limit: >5% opacity over limit for >5% of operating time in reporting period

M4B: COM, 0%-20% Opacity Limit: >5% opacity over limit for >3% of operating time for two consecutive reporting periods

M4C: COM, >20% Opacity Limit: >10% opacity over the limit for >5% of operating time in reporting period

M4D: COM, >20% Opacity Limit: >10% opacity over the limit for >3% of operating time for two consecutive reporting periods

M4E: Method 9, 0%-20% Opacity Limit: >50% over the SIP or NSPS limits

M4F: Method 9, >20% Opacity Limit: >25% over the SIP or NSPS limits

## *DIS: Discretionary HPV*



# MATRIX CRITERION 1

- *Emission Violation Detected by Stack Test (M1A)*
  - Automatic HPV
  - One step: Determine applicability of policy
    - Source is major and
    - Source is major for the pollutant tested
  - Same as General Criterion 8. Included to emphasize that no margin over the standard is allowed. The other Matrix Criteria include a margin.



# MATRIX CRITERION 1

- *Emission Violation Using Process or Formulation Data (M1B and M1C)*
  - Two steps:
    1. Determine applicability of policy
    2. Examine magnitude:
      - Magnitude exceeds standard by >15% (M1B), or
      - Magnitude exceeds standard by Supplementary Significant Threshold (SST) (M1C)

Note: When calculating the excess magnitude in lbs/hour for SST evaluation, do not round to the nearest whole number, e.g., 23.1 lbs/hr is greater than 23 lbs/hour, do not round to 23 lb/hr.





# MATRIX CRITERION 1

- *Supplementary Significant Threshold (SST)* (M1C)
  - Alternative method of calculating magnitude of violation -- uses emission rate in lb/hr

<u>Pollutant</u>	<u>SST</u>
CO	23 lb/hr
NOx	9 lb/hr
SO2	9 lb/hr
VOC	9 lb/hr
PM	6 lb/hr
PM10	3 lb/hr



# CASE STUDY NO. 1

- ***SO2 VIOLATION DETERMINED BY FUEL ANALYSIS (M1B)***

- *Process/Regulation Details*

- Industrial plant with coal fired boiler, SIP limit for SO2: 1.05 lb/mmBtu (24 hr average for coal sampling)

- *Facts of Violation*

- At request of inspector, 24 hour composite coal sample taken
    - Coal sample revealed sulfur content of 1.6% by weight, equal to SO2 emissions of 1.38 lb/mmBtu



# CASE STUDY NO. 1

- *HPV Analysis*
  - Time in Violation: N/A
  - Reference limit HPV threshold: >15%
  - Percent in excess of reference limit:  
 $((1.38 - 1.05 \text{ lb/mmBtu}) \div 1.05 \text{ lb/mmBtu} \times 100) = 31.4\%, > 15\%.$
  - SST: N/A
  - Conclusion: HPV



# MATRIX CRITERION 2

- *Parameter/Surrogate Limit Violation (M2)*
  - Three steps:
    1. Determine applicability of policy
    2. Establish duration
    3. Examine magnitude



# MATRIX CRITERION 2

- *Establish Duration*
  - >3% of operating period,
  - >50% of operating period or
  - >25% of operating period -- each of two consecutive operating periods



# MATRIX CRITERION 2

- *Examine Magnitude*
  - Examine magnitude if duration is:
    - >3% of operating time
  - Magnitude threshold: >5% of standard
  - Violation is an HPV if magnitude exceeds standard by >5% for >3% of operating time (M2A)
  - A violation is an HPV regardless of magnitude if:
    - >50% of operating time (M2B)
    - >25% of operating time -- each of two consecutive reporting periods (M2C)



# CASE STUDY NO. 2

- ***INCINERATOR TEMPERATURE VIOLATION (M2A)***

- *Process/Regulation Details*

- Thermal incinerator at metal parts coating facility must operate above 1,250<sup>0</sup> F to meet destruction efficiency standard as part of RACT limits
- Operating period: 8 hrs/day, 6 days/wk, 52 wks/yr

- *Facts of Violation*

- For semiannual reporting period, 230 hrs of excursions
- 220 hours at or below 1,187<sup>0</sup> F
- 10 hours between 1,188<sup>0</sup> F and 1,250<sup>0</sup> F



# CASE STUDY NO. 2

- *HPV Analysis*
  - Time in violation HPV threshold: >3% ( with consideration of magnitude) or > 50% for one reporting period or >25% for two consecutive periods w/o regard to magnitude)
  - Time in violation:  $(230 \text{ hrs} \div 1,248 \text{ hrs}) \times 100 = 18.4\%$
  - Reference limit HPV threshold: >5% for >3% of operating time
  - Reference limit trigger level:  $\leq 1,187.5^{\circ} \text{ F}$  ( $1,250^{\circ} \text{ F} \times 0.95$ )
  - Percent of time in excess of trigger level:  
 $(220 \text{ hrs} \div 1,248 \text{ hrs}) \times 100 = 17.6\%$
  - SST: N/A
  - Conclusion: HPV, both 3% duration and 5% magnitude criteria are met





# MATRIX CRITERION 3

- *Violation of Non-opacity Applicable Standard Detected by CEMS (M3)*
  - Four steps:
    1. Determine applicability of policy
    2. Identify averaging period
    3. Establish duration
    4. Examine magnitude



# MATRIX CRITERION 3

- *Identify Averaging Period*
  - > 24 hours = automatic HPV (M3F)
  - < 24 hours = examine duration and magnitude



# MATRIX CRITERION 3

- *Establish Duration*

- Possible durations:

- >5% of operating time\*
    - >3% of operating time -- each of two consecutive reporting periods\*
    - >50% of operating time
    - >25% of operating time -- each of two consecutive reporting periods

\* Excludes federally approved exempt periods: startup, shutdown, and malfunction periods pursuant to § 60.11



# MATRIX CRITERION 3

- *Examine Magnitude*
  - Violation is an HPV if magnitude threshold is exceeded for longer than duration threshold:
    - >15% for >5% of operating time (M3A)
    - >SST (M3B)
    - >15% for >3% of operating time -- two consecutive reporting periods (M3C)
  - A violation is an HPV regardless of magnitude if:
    - >50% of operating time (M3D), or
    - >25% of operating time – two consecutive reporting periods (M3E)



# CASE STUDY NO. 3

- ***SO2 CEMS DETECTED SST VIOLATION (M3B)***
  - *Process/Regulation Details*
    - NSPS affected utility coal fired boiler, rated at 400 mmBtu/hr (39 MW)
    - SO2 limit: 1.2 lb/mmBtu (data reported as 3-hr rolling average)
    - Uses coal washing to remove 12% of S and FGD at 75% removal efficiency
    - Quarterly reports required



# CASE STUDY NO. 3

- ***Facts of Violation***

- Excess SO<sub>2</sub> emissions for 124 hrs during quarter; source operated 2,184 hrs
- Exempt excess emissions for 8 hours during FGD system malfunction and 6 hours during subsequent startup
- O<sub>2</sub> diluent monitor out of service for 20 hours
- CEM system down for 8 hours due to cylinder gas audit and DAS maintenance
- Non-exempt SO<sub>2</sub> exceedances were between 1.51 lb/mmBtu and 1.75 lb/mmBtu for 106 hrs, and from 1.23 to 1.31 lb/mmBtu for remaining 4 hrs



# CASE STUDY NO. 3

- **HPV Analysis**

- Time in violation of HPV threshold: >5%
- Time in violation calculation:
  - Subtract exempt time from violation time: 124 hrs - 14 hrs = 110 hrs
  - Subtract CEMS downtime and exempt time from operating time:  
 $2,184 \text{ hrs} - 28 \text{ hrs} - 14 \text{ hrs} = 2,142 \text{ hrs}$
  - Divide revised time in violation by revised operating time (x 100):  
 $(110 \text{ hrs} \div 2,142 \text{ hrs}) \times 100 = 5.1\%$ , > 5% threshold.
- Reference limit HPV threshold: >15% for > 5% of operating period
- Reference limit trigger level:  $1.2 \text{ lb/mmBtu} \times 1.15 = 1.38 \text{ lb/mmBtu}$
- Percent of time in excess of trigger level:  
 $(106 \text{ hrs} \div 2,142 \text{ hrs}) \times 100 = 4.9\%$ .
- 15% threshold not met for 5% of time.



# CASE STUDY NO. 3

- **HPV Analysis (cont.)**

- SST HPV threshold:  $>9 \text{ lb SO}_2/\text{hr}$
- ST trigger level:
  - Maximum allowable  $\text{SO}_2$  emissions:  $480 \text{ lb/hr}$  ( $400 \text{ mmBtu/hr} \times 1.2 \text{ mmBtu}$ )
  - Trigger  $> 489 \text{ lb/hr} = 1.2225 \text{ lb/mmBtu/hr}$  ( $(9 \text{ lb/hr} \div 480 \text{ lb/hr}) \times 1.2 \text{ lb/mmBtu} + 1.2 \text{ lb/mmBtu}$ )
- Actual  $\text{SO}_2$  emissions exceed  $1.2225 \text{ lb/mmBtu}$  for 5.1% of operating time ( $110 \text{ hrs} \div 2,142 \text{ hrs} \times 100$ )
- Conclusion: HPV because SST is met for  $> 5\%$  of op. time.
- Example shows how exempt excess emissions and CEM downtime are calculated for time in violation





# CASE STUDY NO. 4

- ***NO<sub>x</sub> CEMS DETECTED VIOLATION (M3D)***
  - *Process/Regulation Details*
    - New coal fired cogeneration plant with SCR controls, NO<sub>x</sub> PSD permit limit: 0.15 lb/mmBtu
    - Quarterly reporting required
  - *Facts of Violation*
    - During last quarter, excess emissions from 0.151 to 0.170 lb/mmBtu for 1,204 hrs
    - Source operated for 2,160 hrs
    - NO<sub>x</sub> monitors were out of service for 4 hrs due to QA



# CASE STUDY NO. 4

- *HPV Analysis*

- Time in violation HPV threshold: >50%
- Time in violation:  
 $(1,204 \text{ hrs} \div 2,156 \text{ hrs}) \times 100 = 55.8\%$
- Percent in excess of reference limit: N/A
- SST: N/A
- Conclusion: HPV
- Because time in violation was >50%, no need to consider magnitude



# MATRIX CRITERION 4

- *Violation of Opacity Standards (M4)*
  - Six Steps:
    1. Determine applicability of policy
    2. Identify method of detection
    3. Identify applicable standard
    4. Establish duration
    5. Examine magnitude
    6. Determine if mitigating factors exist (Method 9 VE detected violations only)



# MATRIX CRITERION 4

## 1. *Applicability of Policy*

- Applies only to opacity resulting from particulate emissions

## 2. *Identify Method of Detection*

A. Continuous Opacity Monitor System (COMS)

B. Method 9 Visible Emission Observation (VEO)

Note: Detection method determines magnitude and duration criteria

## 3. *Identify Applicable Standard*

- HPV criteria are different depending on whether opacity standard is  $\leq 20\%$  opacity or  $> 20\%$  opacity



# MATRIX CRITERION 4

## 4. *Establish Duration*

- Violation detected by COM:
  - >5% of operating time, or
  - >3% of operating time -- each of two consecutive reporting periods
- Violation detected by Method 9 VE
  - No duration requirement



# MATRIX CRITERION 4

## 5. *Examine Magnitude*

- COM detected violation:
  - If opacity standard is  $\leq 20\%$ ,  $>5\%$  opacity over limit for more than applicable duration threshold (M4A, M4B)
  - If opacity standard is  $>20\%$ ,  $>10\%$  opacity over limit for more than applicable duration threshold (M4C, M4D)
- Method 9 VE detected violation:
  - If opacity standard is  $\leq 20\%$ ,  $>50\%$  over limit (i.e.,  $>1.5 \times$  limit) – no duration threshold (M4E)
  - If opacity standard is  $>20\%$ ,  $>25\%$  over limit (i.e.,  $>1.25 \times$  limit) – no duration threshold (M4F)



# MATRIX CRITERION 4

## 6. *Determine if Mitigating Factors Exist*

- For Method 9 VE detected violations only
- Mitigating factors exist if:
  - Cause of violation is corrected within 30 days of violation and source returns to compliance, or
  - Source is in compliance with applicable mass limit at time visual reading was taken
- If mitigating factors exist, source should not be placed on HPVL



# CASE STUDY NO. 5

- ***WOOD WASTE BOILER OPACITY VIOLATION  
DETECTED BY COM (M4B)***

- *Process/Regulation Details*

- Wood furniture manufacturing facility has SIP limit of 30% opacity for oil/wood waste boiler
- Operating time intermittent over 6-day work week
- Quarterly reporting of opacity exceedances in 5% opacity intervals required





# CASE STUDY NO. 5

- *Facts of Violation*

- Current quarter: 652 six-minute exceedances, 468 operating hours, no COM downtime
  - 306 were  $\leq 35\%$
  - 170 were  $> 35\%$  but  $\leq 40\%$
  - 102 were  $> 40\%$  but  $\leq 45\%$
  - 60 were  $> 45\%$  but  $\leq 50\%$
  - 14 were  $> 50\%$
- Previous quarter: 112 six minute exceedances, 452 operating hours



# CASE STUDY NO. 5

- *HPV Analysis*

- Time in violation HPV threshold: > 5% of operating time for one reporting period or >3%, each of two consecutive reporting periods
- Time in violation:  
$$(65.2 \text{ hrs} \div 468 \text{ hrs}) \times 100 = 13.9\%$$
- Reference limit HPV threshold: >10% opacity
- Reference limit trigger level: 40% opacity (30% opacity + 10% opacity)



# CASE STUDY NO. 5

- ***HPV Analysis (cont.)***

- Percent of time in excess of trigger level:

- Previous period: 2.5% @ >30% opacity ( $11.2 \text{ hrs} \div 452 \text{ hrs} \times 100$ )
    - Current period: 3.8% @ >40% opacity ( $17.6 \text{ hrs} \div 468 \text{ hrs} \times 100$ )

Note it is unnecessary to apply the 40% trigger level to the previous period, since the duration of all violations over the 30% standard is less than the 3% threshold

- Conclusion: Not HPV
  - If next quarter exceedances are >40% opacity for >3% of operating time, HPV criteria would be met



# CASE STUDY NO. 6

- ***ASPHALT PLANT OPACITY VIOLATION  
DETECTED BY METHOD 9 (M4E)***

- *Process/Regulation Details*

- Asphalt concrete plant, uses venturi scrubber
- SIP opacity limit: 20% opacity
- SIP mass limit: process weight rate in lbs/hr

- *Facts of Violation*

- Inspector observed excess emissions ranging from 50% to 60% opacity



# CASE STUDY NO. 6

- ***HPV Analysis***

- Time in violation: N/A
- Reference limit HPV threshold: >50% over limit
- Reference limit trigger level: 30% opacity (1.5 x 20% opacity)
- Trigger level is exceeded (all Method 9 VE readings exceed 30% opacity)
- Corrective action not taken within 30 days, and source does not show compliance with mass limit
- Conclusion: HPV



# DISCRETIONARY HPV DETERMINATIONS (DIS)

- If the General or Matrix Criteria are not met, source may be considered an HPV for other reasons, for example:
  - If source consistently violates regulations by a low level
  - Significant violations not covered under specific criteria of the Policy (e.g., leak detection and repair violations)
  - Violations involving disregard of applicable requirements or no attempt to take corrective action
  - Violations at one plant when a pattern of similar violations are HPVs at other company plants
  - Violation of a minor source subject to NESHAP and emitting HAPs located in a densely populated area
- Decision should be made based on the mutual agreement of the Regional Office and the State or Local agency



# HPV T&A ENFORCEMENT REPORTING

- *2005 AFS HPV ICR*
  - HPV “Violation Discovered” Action and Date (MDR 20)
    - Basis for setting of Day Zero
    - PCE, FCE, Stack Test Report, Title V Annual Compliance Certification, Investigation
  - HPV “Violation Type Code” (MDR 24)
    - Three-digit code which General or Matrix criteria met or if HPV is Discretionary
  - HPV “Violating Pollutants” (MDR 25)
- *Compliance Status (MDR 19)*
  - Should reflect historic and current compliance history
  - Even if violation is corrected and the source is returned to compliance, HPV status continues until Resolved.



# HPV T&A

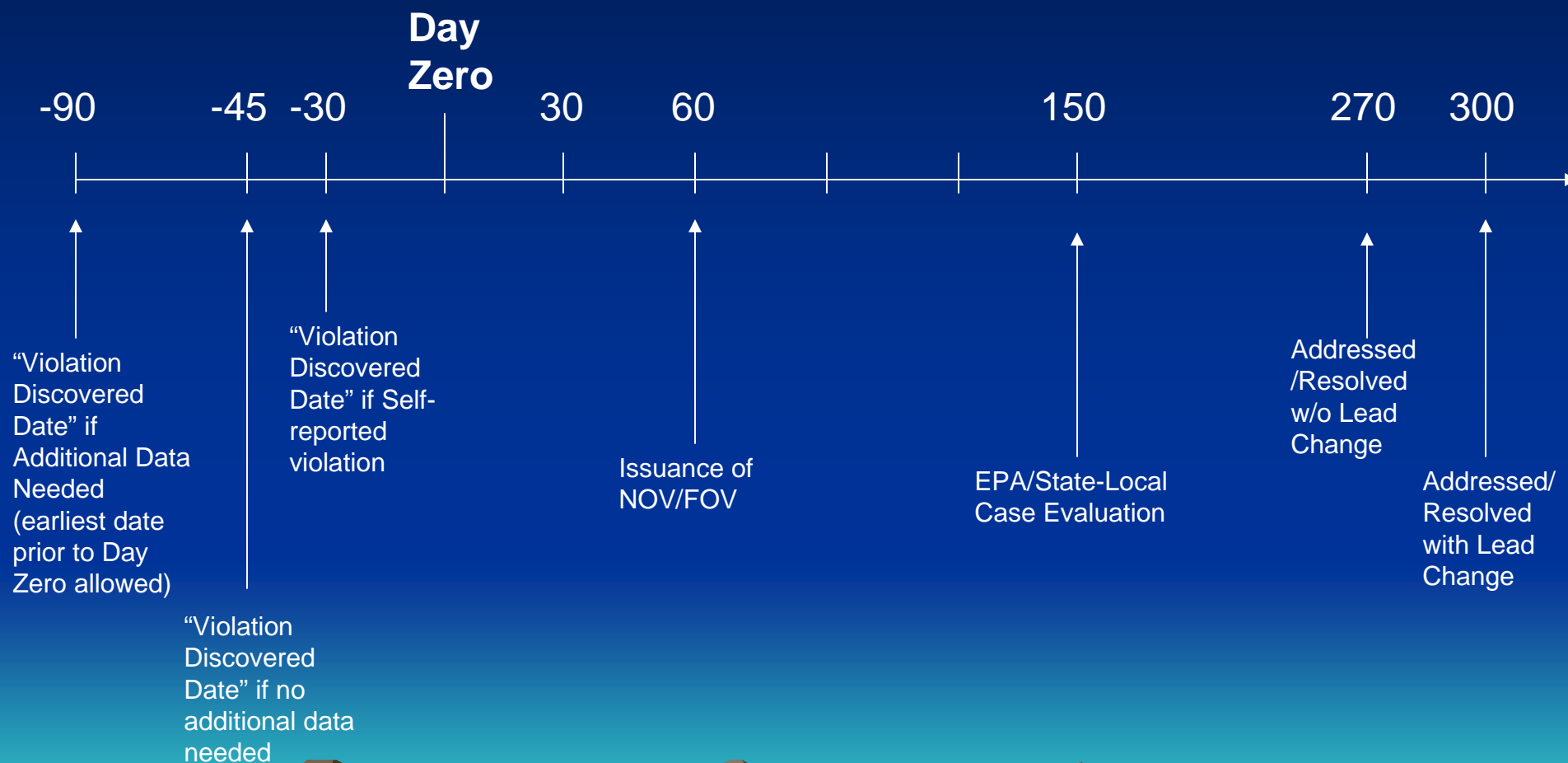
## ENFORCEMENT : Enforcement Status

- *Addressed/Resolved (MDR 20)*
  - Addressed:
    - Civil complaint filed, Administrative or Judicial
    - Subject to enforceable, expeditious administrative or judicial order
    - An approvable SIP or FIP leading to compliance has been proposed
    - Subject to a referral to the State AGI or U.S. DOJ for an adjudicatory enforcement hearing or judicial order
  - Resolved:
    - Source compliance is confirmed
    - All penalties collected
    - SEPs and injunctive relief completed





# HPV T&A Enforcement Timeline



National AFS Workshop  
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# HPV T&A

## ENFORCEMENT TIMELINES

- *Violation Discovered to Day Zero*
  - Discovery of violation, through inspection or self reporting
  - Determine if additional information is needed to see if violation fits within the HPV Policy
    - If no additional information needed, Day Zero is no later than 45 days after violation is discovered
    - If additional information needed, Day Zero is day additional information received or 90 days after violation is discovered, whichever is earlier
    - For self reported violations, Day Zero is no later than 30 days after information on violation is received



# HPV T&A

## ENFORCEMENT TIMELINES

- *Day Zero to Violation Resolved/Addressed:*
  - Timeliness of enforcement action is calculated from Day Zero
    - Day Zero is derived from the “Violation Discovered” Action and Date
  - Ongoing activities:
    - State/Local and EPA consultations: on a monthly basis
    - Lead changes: at any time
    - Extension of deadlines: changes may be made to schedule after consultation between EPA and State/Local agency



# HPV T&A

## ENFORCEMENT TIMELINES

- *Day Zero to Violation Resolved/Addressed:*
  - Timeline:
    - Issuance of NOV/FOV: by Day 60
    - Case Progress Evaluation: by Day 150
    - Violation addressed/resolved:
      - by Day 270, if there is no lead change, or
      - by Day 300 if a lead change has occurred



# HPV T&A ENFORCEMENT REPORTING : The Watch List

- **HPVs of the HPVs**
- **Provides an automated, online “Management Tool” to implement the HPV Policy**
  - no new reporting by states beyond current HPV Policy
  - manages and records “routine” S/L dialogues with EPA Regions
    - e.g., monthly in Policy; Qtrly in Watch List
  - provides “qualitative” report to EPA Regions and HQs



# HPV T&A ENFORCEMENT REPORTING : Watch List Criteria

- *Criteria “1A” – Unaddressed HPV*
  - Current HPV that has been in unaddressed (no action) status for greater than 270 days
- *Criteria “1B” – Repeat HPV w/o Deterrent*
  - Current HPV with 3 or more findings of HPV (known as Day Zeros) w/l the last 3 years w/o penalty
- *Criteria “1C” – Lingering Addressed HPVs*
  - Four consecutive years of “addressed” but unresolved HPV status with current compliance status as “violation” or “unknown”.



# HPV T&A ENFORCEMENT REPORTING :

## Watch List Most Prevalent Errors

- *Criteria “1A” – Unaddressed HPV*
  - No addressing action reported to AFS
  - Addressing action is in AFS but not linked to HPV pathway
  - Linked action is not flagged as “addressing” type
- *Criteria “1B” – Repeat HPV w/o Deterrent*
  - No assessed penalty on “addressing” action
- *Criteria “1C” – Lingering Addressed HPVs*
  - Compliance Status not updated



# HPV T&A ENFORCEMENT REPORTING :

## Major Data Issues

- Reviews of Watch List data have uncovered the following problems:
  - Compliance Status errors comprised a third of noted errors in Watch List pathways
- Use of the OT (Other) Action Type for addressing pathways
  - It is important to use OT in conjunction with a Civil Referral.
  - OT should NEVER be used alone, e.g., always link the actual enforcement action like referral to AG/DOJ
- Day Zero/Addressing Dates: Rarely if ever same day.





# Examples of Continuing Problems with HPV Reporting

- Some under-reporting of HPVs for:
  - Synthetic Minor permit condition violations
  - CEM based Excess Emission violations
  - Title V Annual Certifications (ACC) violations, e.g., late, not reported, inadequate certification, etc.
    - Example of inadequate certification reporting occurs when a stack test failure is not included as a deviation in ACC.
- Violation or Compliance Status under-reporting:
  - Scenario 1 – HPV is reported, but there is no indication of what the violation is, e.g., pollutant or when violation discovered.
  - Scenario 2 – Violations are evident through analysis or SRF file review, but are not found in AFS.

# Examples of Continuing Problems with HPV Reporting

- HPV Minimum Data Elements (MDRs) not consistently reported:
  - HPV Discovery Date and Action type
  - HPV Violation Type codes
  - HPV Violating Pollutant(s)

Note: These MDRs went into effect on 10/1/2005 for all HPV Day Zeros reported to AFS after that date.

# PENALTIES FOR HPVs

- National goal is to have all Federal, State, and Local enforcement settlements assess penalties sufficient to achieve effective deterrence.
  - Obtain penalty sum to compensate for economic benefit of noncompliance
    - encouraged to use BEN model
  - Gravity component should also be assessed
- EPA will give more oversight to State/Local agencies that have not adopted adequate penalty policies
  - EPA CAA Civil Penalty policy is national yardstick
- EPA will consider overfiling where State/Local penalty fails to meet T&A requirements



# HPV T&A ENFORCEMENT: Consultation

- EPA and State should conduct frequent (at least monthly) informal consultations is to discuss compliance efforts and, at a minimum:
  1. Identify each newly-found HPV(s);
  2. Identify sources notified of noncompliance;
  3. Identify violators where action has been taken;
  4. Discuss status of other enforcement actions
  5. Discuss status of sources on the Watch List and actions being taken to delist them



# Web Resources

- HPV Policy & Implementation Memo
  - <http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/issue-ta-rpt.pdf>
- HPV Workbook
  - <http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/hpvmanualrevised.pdf>
- Watch List
  - <http://www.epa.gov/idea/watchlist/>
- State Review Framework
  - <http://www.epa.gov/idea/otis/stateframework.html>
- EPA Enforcement Policies Compendium
  - <http://cfpub.epa.gov/compliance/resources/policies/civil/caa/>
- EPA AFS Business Rules Compendium
  - <http://epa.gov/compliance/resources/policies/data/systems/air/afsbusinessrules.html>



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